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8 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 2013-947

11 **TAMARA LYNN FOLEY**  
12 **100 Encino Avenue**  
13 **Camarillo, CA 93010**

**A C C U S A T I O N**

14 **Registered Nurse License No. 556121**

15 Respondent.

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17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
21 Consumer Affairs.

22 2. On or about June 25, 1999, the Board of Registered Nursing issued Registered Nurse  
23 License Number 556121 to Tamara Lynn Foley (Respondent). The Registered Nurse License  
24 was in full force and effect at all times relevant to the charges brought herein and will expire on  
25 March 31, 2015, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board of Registered Nursing (Board),  
3 Department of Consumer Affairs, under the authority of the following laws. All section  
4 references are to the Business and Professions Code unless otherwise indicated.

5 4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part,  
6 that the Board may discipline any licensee, including a licensee holding a temporary or an  
7 inactive license, for any reason provided in Article 3 (commencing with Section 2750) of the  
8 Nursing Practice Act.

9 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license  
10 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the  
11 licensee or to render a decision imposing discipline on the license. Under Section 2811(b) of the  
12 Code, the Board may renew an expired license at any time within eight years after the expiration.

13 **STATUTORY AND REGULATORY PROVISIONS**

14 6. Section 482 of the Code states:

15 Each board under the provisions of this code shall develop criteria to  
16 evaluate the rehabilitation of a person when:

17 (a) Considering the denial of a license by the board under Section 480; or

18 (b) Considering suspension or revocation of a license under Section 490.

19 Each board shall take into account all competent evidence of  
20 rehabilitation furnished by the applicant or licensee.

21 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or  
22 revoke a license on the ground that the licensee has been convicted of a crime substantially  
23 related to the qualifications, functions, or duties of the business or profession for which the  
24 license was issued.

25 8. Section 493 of the Code states:

26 Notwithstanding any other provision of law, in a proceeding conducted  
27 by a board within the department pursuant to law to deny an application for a  
28 license or to suspend or revoke a license or otherwise take disciplinary action  
against a person who holds a license, upon the ground that the applicant or the  
licensee has been convicted of a crime substantially related to the qualifications,  
functions, and duties of the licensee in question, the record of conviction of the  
crime shall be conclusive evidence of the fact that the conviction occurred, but

only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'

9. Section 2052 of the Code states in part:

(a) Notwithstanding Section 146, any person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as provided in this chapter or without being authorized to perform the act pursuant to a certificate obtained in accordance with some other provision of law is guilty of a public offense, punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, by imprisonment in a county jail not exceeding one year, or by both the fine and either imprisonment....

10. Section 2725.1 of the Code states:

(a) Notwithstanding any other provision of law, a registered nurse may dispense drugs or devices upon an order by a licensed physician and surgeon or an order by a certified nurse-midwife, nurse practitioner, or physician assistant pursuant to Section 2746.51, 2836.1, or 3502.1, respectively, if the registered nurse is functioning within a licensed primary care clinic as defined in subdivision (a) Section 1204 of, or within a clinic as defined in subdivisions (b), (c), (h), or (i) of Section 1206 of, the Health and Safety Code.

(b) No clinic shall employ a registered nurse to perform dispensing duties exclusively. No registered nurse shall dispense drugs in a pharmacy, keep a pharmacy, open shop, or drugstore for the retailing of drugs or poisons. No registered nurse shall compound drugs. Dispensing of drugs by a registered nurse, except a certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51 or a nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, shall not include substances included in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code). Nothing in this section shall exempt a clinic from the provisions of Article 13 (commencing with Section 4180) of Chapter 9.

11. Section 2726 of the Code states, "Except as otherwise provided herein, this chapter confers no authority to practice medicine or surgery."

12. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed

nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

...

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice Act] or regulations adopted pursuant to it.

...

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

...

(i) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of, or arranging for, a violation of any of the provisions of Article 12 (commencing with Section 2220) of Chapter 5...

13. Section 2762 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act] it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

14. Section 2765 states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a registered nurse is deemed to be a conviction within the meaning of this article. The board may order the license or certificate suspended or revoked, or may decline to issue a license or certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

### **REGULATORY PROVISIONS**

15. California Code of Regulations, title 16, Section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to

1 practice in a manner consistent with the public health, safety, or welfare. Such  
2 convictions or acts shall include but not be limited to the following . . .

3 16. California Code of Regulations, title 16, Section 1445, states in part:

4 (b) When considering the suspension or revocation of a license on the  
5 grounds that a registered nurse has been convicted of a crime, the board, in  
6 evaluating the rehabilitation of such person and his/her eligibility for a license  
7 will consider the following criteria:

8 (1) Nature and severity of the act(s) or offense(s).

9 (2) Total criminal record.

10 (3) The time that has elapsed since commission of the act(s) or offense(s).

11 (4) Whether the licensee has complied with any terms of parole,  
12 probation, restitution or any other sanctions lawfully imposed against the  
13 licensee.

14 (5) If applicable, evidence of expungement proceedings pursuant to  
15 Section 1203.4 of the Penal Code.

16 (6) Evidence, if any, of rehabilitation submitted by the licensee.

#### 17 COST RECOVERY

18 17. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
19 administrative law judge to direct a licentiate found to have committed a violation or violations of  
20 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
21 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
22 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
23 included in a stipulated settlement.

#### 24 DANGEROUS DRUGS

25 18. "Botox", Botulinum Toxin Type A, is a dangerous drug pursuant to Section 4022.

26 19. "Latisse" is a glaucoma drug which is repurposed as an eyelash grower, has serious  
27 side affects, including but not limited to causing a person's eye color to change, and is a  
28 dangerous drug pursuant to Section 4022.

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**FACTS**

20. On or about August 10, 2010, the Medical Board of California received an anonymous written complaint against Respondent and T.C., M.D.<sup>1</sup> The complaint alleged that Respondent injected Botox and Restylane at the POSH Hair and Skin Studio (POSH), located at 2068 Ventura Blvd., Suite C in Camarillo, to a seventeen-year-old girl in the back room of a hair salon. The complainant stated the teenager was their daughter, that she was never seen by a physician, and was not given a prior examination. Furthermore, the complaint stated the teenager had purchased the prescription Latisse (to grow eyelashes), without a doctor's prescription. The complainant called Respondent after her daughter's blue eyes turned brown, and was told by her "not to worry" and to not call "Dr. [T.C.]".

21. Beginning on or about June 9, 2011, investigators of the Medical Board conducted an undercover investigation of POSH and Respondent. Investigator C.R. drove by POSH and there was no indication it was any type of medical practice or healthcare facility. C.R. found a Facebook account for POSH, which indicated that Respondent was the owner and "injector" of the business, and which posted sale specials for Botox, Juvederm and Latisse. The postings said to make an appointment with "Tamara" for Botox and Juvederm. On or about February 9, 2012, C.R. called POSH and was told by the woman answering the phone that "Tamara" was the owner and was licensed to do Botox treatments.

22. C.R. searched the Medical Board's license database, and determined that Respondent did not have a medical license. In addition, there was no fictitious name permit issued by the Medical Board at the address for POSH, which is a requirement for stand-alone medical facilities.

23. On or about March 2, 2012, Supervising Investigator C.A.M. and Investigator M.I. of the Medical Board went to POSH with C.A.M. wearing a hidden video recording camera. C.A.M. spoke with Respondent and indicated she wanted to be treated with Botox. Respondent told C.A.M. that she would need to make an appointment with their doctor before getting the

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<sup>1</sup> Initials are being used for the names of individuals referred to in this Accusation to protect their privacy; but their identities will be revealed to Respondent after a timely and proper request for discovery to Complainant.

1 Botox treatment. Respondent told her the consultation with the doctor would be done via video  
2 conferencing on SKYPE. Respondent stated she would administer the Botox as soon as she was  
3 done with the consultation. C.A.M. asked if she could purchase Latisse, and she said she could  
4 not sell it without a doctor's prescription. When C.A.M. requested again to purchase Latisse,  
5 Respondent agreed, but called "Dr. [T.C.]" and handed the phone to C.A.M. Dr. T.C. asked her if  
6 she had glaucoma now or in the past, and she replied that she did not. Dr. T.C. then told C.A.M.  
7 she was a good candidate for Latisse. Respondent then asked if M.I. also wanted Latisse, and she  
8 replied that she did. Respondent handed the phone to M.I., and Dr. T.C. told M.I. she was also a  
9 good candidate for Latisse, after M.I. confirmed she did not have glaucoma. Respondent sold  
10 Latisse to C.A.M. and gave M.I. a free box of Latisse because they were having a "two for one"  
11 sale. M.I. paid Respondent \$150 for the Latisse. Before they left, C.A.M. made an appointment  
12 to return and get Botox injections.

13 24. C.R. determined via a search of the California Board of Barbering and Cosmetology  
14 that POSH did not have an establishment license issued by the Board of Barbering and  
15 Cosmetology.

16 25. On or about April 26, 2012, Supervising Investigator J.E. for the Medical Board  
17 scheduled an appointment for Botox on May 9, 2012 at 11:45 a.m. She was told she would not  
18 need to see a doctor. On the same day, J.E. arrived at POSH posing as a patient seeking Botox  
19 treatment, wearing a hidden video recording device. At approximately 12:15 p.m., J.E. sent a text  
20 message to C.R. that she was not seen by a doctor. At this point, C.I. and Medical Board  
21 Investigators T.Y. and M.S. went into POSH and walked to the back of the salon, where  
22 Respondent was preparing the Botox injections. C.R. informed Respondent she was under arrest  
23 for practicing medicine without a medical license. Respondent immediately informed C.R. that  
24 she did have a license, that she was a nurse, and that she worked for Dr. T.C. Respondent was  
25 arrested and booked at the Ventura County Jail.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Criminal Conviction of Practicing Medicine Without a License)**

3 26. Respondent is subject to disciplinary action under Code sections 490, 2052, 2725.1,  
4 subdivisions (a) and (b), 2726, and 2761, subdivision (f), in conjunction with California Code of  
5 Regulations, title 16, Section 1444, for conviction of a crime that is substantially related to the  
6 qualifications, functions and duties of a registered nurse in that, on or about August 8, 2012 in  
7 *The People of the State of California v. Tamara Lynn Foley, et al.*, in Superior Court of  
8 California, County of Ventura, Case No. 2012017031, Respondent was convicted of one felony  
9 count, on her guilty plea, of unlawfully practicing, attempting to practice and/or holding herself  
10 out as practicing, a system and mode of treating the sick and afflicted, and diagnosed, treated, and  
11 prescribed for an ailment, disease, injury and other physical and mental condition, on May 9,  
12 2012, without having a valid, unrevoked and unsuspended physician's or surgeon's certificate, in  
13 violation of Code section 2052, subdivision (a).

14 27. The circumstances that led to the conviction are more fully set forth above in  
15 Paragraphs 20-25, inclusive, and incorporated herein as though set forth in full.

16 28. On or about October 22, 2012, Count 1 was reduced from a felony to a misdemeanor,  
17 and Respondent was released on a Conditional Revocable Release. As a result of the conviction,  
18 Respondent was sentenced to serve one day in the Ventura County Jail with credit for one day  
19 actual time served, directed to perform 200 hours of community service by October 22, 2015, pay  
20 victim restitution and/or restitution to the Medical Board of California, and pay other restitution,  
21 fines and fees.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Obtain or Possess a Dangerous Drug)**

24 29. Respondent is subject to disciplinary action under Code sections 2761, subdivision  
25 (a), and 2762, subdivisions (a) and/or (b), on the grounds of unprofessional conduct, in that on or  
26 about March 2, 2012 and May 9, 2012, respectively, Respondent obtained and/or possessed the  
27 dangerous drugs Latisse and Botox, without valid prescriptions. Complainant refers to and by  
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1 this reference incorporates the allegations set forth above in Paragraphs 20-26, inclusive, as  
2 though fully set forth herein.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct – Violations of Nursing Practice Act)**

5 30. Respondent is subject to disciplinary action under Code section 2761, subdivisions (a)  
6 and (d), in conjunction with Code sections 2725.1, 2726 and 2762, for violating or attempting to  
7 violate, any provision or term of the Nursing Practice Act, by practicing medicine without a  
8 license and possessing and issuing medications without prescriptions, as more fully set forth  
9 above in Paragraphs 20-26, inclusive, and incorporated herein.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(General Unprofessional Conduct)**

12 31. Respondent is subject to disciplinary action under Code section 2761, subdivisions (a)  
13 and (i) for general unprofessional conduct, by practicing medicine without a license and  
14 possessing and issuing medications without prescriptions, as more fully set forth above in  
15 Paragraphs 20-26, inclusive, and incorporated herein.

16 **PRAYER**

17 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
18 and that following the hearing, the Board of Registered Nursing issue a decision:

19 1. Revoking or suspending Registered Nurse License Number 556121, issued to Tamara  
20 Lynn Foley;

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2. Ordering Tamara Lynn Foley to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

3. Taking such other and further action as deemed necessary and proper.

DATED:

April 22, 2013

for Stacie Bern  
LOUISE R. BAILEY  
Executive Officer

LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
*Complainant*

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